

STATE OF MICHIGAN
COURT OF APPEALS

JAMES B. SCHRAM,

Plaintiff-Appellant,

v

MONA L. SCHRAM,

Defendant-Appellee.

UNPUBLISHED

May 18, 2006

No. 263237

Marquette Circuit Court

LC No. 04-041233-DO

Before: Sawyer, P.J., and Kelly and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the parties' judgment of divorce. Plaintiff challenges the calculation of the marital equity in the marital home and the award to defendant of modifiable alimony in the amount of \$1,000 per month for 60 months. We affirm the alimony award, but remand for a property division using the correct valuation of marital equity in the marital home.

Plaintiff argues that the trial court erred as a matter of law when, in calculating the marital equity in the marital home, it did not consider the amount of defendant's mortgage that was paid off during the marriage. We agree. "This Court reviews a property distribution in a divorce case by first reviewing the trial court's factual findings for clear error, and then determining whether the dispositional ruling was fair and equitable in light of the facts." *Olson v Olson*, 256 Mich App 619, 622; 671 NW2d 64 (2003). The goal in dividing marital assets in a divorce is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002). "The division need not be mathematically equal, but any significant departure from congruence must be clearly explained by the trial court." *Gates v Gates*, 256 Mich App 420, 423; 664 NW2d 231 (2003).

For the marital home, any equity built up during the marriage is part of the marital estate. *Reeves v Reeves*, 226 Mich App 490, 495; 575 NW2d 1 (1997). Any equity that accrued in the home before the marriage is considered part of the separate estate of the party who owned the home before the marriage. *Id.* at 496. Equity can be built up both by appreciation of the home's market value and also by payments made on the mortgage during the marriage. *Id.* at 495.

In this case, the trial court erred in ruling that the amount of defendant's mortgage that was paid off during the marriage is irrelevant to the calculation of marital equity in the home. *Id.* at 495-496. The undisputed record indicates that the increase in market value of the home during the marriage was \$29,000 and \$22,000 of the mortgage was paid off during the marriage.

Accordingly, the proper valuation of marital equity in the home is \$51,000. On remand, the trial court shall re-divide the marital property considering this correct valuation of marital equity in the home.¹

Plaintiff next argues that the trial court's award of alimony in the amount of \$1,000 per month for 60 months was excessive. We disagree. An award of alimony is in the trial court's discretion. *Gates, supra* at 432. If the trial court's findings of fact are not clearly erroneous, we must then decide if the dispositional ruling was fair and equitable in light of the facts. *Id.* at 433.

"The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party." *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). "Alimony is to be based on what is just and reasonable under the circumstances of the case." *Id.*

Among the factors that should be considered are: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Olson, supra* at 631.]

The trial court indicated that one of the primary purposes for the alimony was to help defendant with her prescription drug costs. The evidence at trial established that defendant has on-going prescription drug costs of \$1,500 per month, although she might be able to reduce this to \$750 to 850 per month with insurance. The evidence also established that defendant's illness had progressed to a point where she had to take a disability retirement in 2002. Plaintiff's income at the time of trial was sufficient to pay the alimony award. The court also took note of the three-extra marital affairs plaintiff had engaged in during the marriage, considering them in context of plaintiff's overall pattern of behavior toward defendant and her property. Given these circumstances, the court concluded that an award of alimony was appropriate. The trial court concluded, however, that given the short duration of the marriage, plaintiff should not be required to support defendant's medical needs for the rest of her life. Instead, the court limited alimony to a duration roughly equivalent to the duration of the parties' relationship. Under these circumstances, we conclude that the award of modifiable alimony in the amount of \$1,000 per month for five years was proper.

¹ We do not address defendant's argument that she is entitled to a larger portion of the marital equity in the home because assets from her 403(b) account were used to pay off the mortgage during the marriage. This is more properly addressed by the trial court on remand when it re-divides the marital property.

We affirm the award of alimony, but remand for the trial court to re-divide the martial property using the correct valuation of marital equity in the marital home. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Kirsten Frank Kelly
/s/ Alton T. Davis